IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9800 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

MANAGER, AIR CONTROL ENGG CO LTD

Versus

KANAIYALAL GHUSABHAI KUNVARIA

Appearance:

MR PS CHARI for Petitioner

MR MUKUL SINHA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/03/2000

ORAL JUDGEMENT

The Industrial Disputes Act was designed to provide a self contend code to compel the parties to resort to industrial arbitration for the resolution of

existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relation norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and device rationale norms keeping pace with improved industrial relations reflecting an imbedding socio-economic justice. That being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show in preference of upholding agreements sanctified by mutuality and consensus in larger public interest namely to enchew industrial strife confrontation and consequent wastage. The narrow and restricted meaning to the expression in the Act should be avoided and a pragmatic approach must be adopted.

2. The brief facts of the present writ petition are as under :-

3. The petitioner-Company is engaged in the manufacture of refrigeration equipments, fans and compressors and it employes about 300 workmen. The compressors and it employes about 300 workmen. The respondent-workman entrusted duties as a Works Manager. The services of the respondent-workman was terminated by an Order 3rd August, 1990. According to the petitioner, after lapse of six years of termination, the respondent-workman who had once held the position of Manager and Works Manager had challenged the said termination order, under the Industrial Disputes Act, before the Labour Court at Ahmedabad. The said Reference has been made by the Appropriate Government to the Labour Court, Ahmedabad being Reference No. 25 of 1997 [New Number 757 of 1997]. Before the Labour Court, the respondent-workman has filed statement of claim and the petitioner-Company had filed written statement vide Exh. 10. In the written statement, the petitioner-Company has raised preliminary contention/point that the said Reference is not maintainable and that the Labour Court has no jurisdiction to decide or adjudicate the said Reference on the ground that respondent-workman is not a `Workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 [hereinafter referred to as, `the Act']. Therefore, the contention was raised by the petitioner-Company that this preliminary issue viz.,`Whether the respondent-workman is a `workman' within the meaning of Section 2 (s) of the Act or not is required to be decided first and thereafter, the said Reference is required to be decided on its own merits.' The petitioner-Company has given application vide Eh. 10 raising this preliminary issue. This application

preferred by the petitioner-Company was objected to by the respondent-workman by submitting his written submission vide Exh. 12. The respondent-workman has pointed out in his reply that whether the petitioner-Company is a Sick Unit or not, no documentary evidence has been produced before the Labour Court. It is further submitted that the respondent-workman that once the Reference has been made by the appropriate Government then the Labour Court has jurisdiction to examine and adjudicate on the terms of reference under Section 10, sub-clause 1 of the I.D Act. The question which has been raised by the petitioner-Company requires detailed evidence as well as legal issue is required to be examined on merits of the matter and unless and until the evidence is not taken up or produced by the respective parties, this question cannot be examined by the Labour Court, and therefore, the application Exh. 10 filed by the petitioner-Company is required to be rejected. It is also pointed out by the respondent-workman that just to cause/create delay in deciding the main reference, with the malafide intention, the said application has been filed by the petitioner-Company. Learned advocate Mr. Chari appearing for the petitioner-Company has submitted that before the Labour Court, documentary evidence was produced vide Exh. 13 and it was pointed out to the Labour Court that considering this documentary evidence, prima facie, the respondent-workman is not covered as a `workman' within the meaning of Section 2 (s) of the I.D Act, and therefore, this application is required to be decided as a preliminary issue and it must have to be accepted. After considering the submissions raised from both the sides, the Labour Court, Ahmedabad has considered the decision of the Apex court in the case of D.P Maheshwari and came to the conclusion that unless and until the proper evidence are produced before the Labour Court, and in absence of such evidence, no decision can be taken by the Labour Court and it is not reasonable for the Labour Court to examine the said issue as a preliminary issue in absence of such evidence, and therefore, he decided that this question which has been raised by the petitioner-Company vide Exh. 10 shall be decided alongwith the final adjudication of the main Reference, and accordingly, the Labour Court, Ahmedabad has passed an order on 1st November, 1999 that this preliminary issue raised by the petitioner-Company vide Exh. 10 will be decided by the Labour Court alongwith the final adjudication of Reference and the hearing has been fixed by the Labour Court on 19th November, 1999. The petitioner-Company has challenged the said Order which is at Annexure-A to the petition at page 15 to 19

dated 1st November, 1999.

Learned advocate Mr. Chari has submitted that the Labour Court has committed gross error in coming to the conclusion that this preliminary issue will be required to be decided alongwith the final adjudication of the main Reference. It was contended that it is the duty of the Labour Court to decide the preliminary issue which goes to the root of the matter and which affects the jurisdiction of the Labour Court, and therefore, such issue is required to be decided as a preliminary point. Mr. Chari further submitted that the necessary documents were produced before the Labour Court vide Exh. 13 which prima facie shows that the respondent-workman was working as a Manager and Works Manager in the petitioner-Company. He further submitted that the Labour Court has also committed error in relying upon the decision of the Apex Court in the matter of D.P Maheshwari [Supra]. In support of his contention, Mr. Chari has relied upon a decision of the Apex Court in the matter of Express Newspaper's case reported in AIR (1963) SC 569. Mr. Chari has contended that the Reference is belated one as it has been raised after the lapse of six years of termination, and therefore, the entire Reference is bad, and therefore, it is the duty of the Labour Court to examine the said issue as a preliminary issue. He also submitted that if the said question is not examined as a preliminary issue then if ultimately an award in favour of the respondent-workman is made by the Labour Court, then the petitioner-Company will have to pay last drawn salary to the respondent-workman under Section 17 (B) of the I.D Act. This contention has been raised by Mr. Chari in ground-H to the writ petition. In support of these contentions, Mr. Chari has relied upon certain decisions of Apex Court as well as various High Courts, being -

(i) National Engineering Industries Limited
v.
State of Rajasthan & Ors.
[2000 I CLR p-389]

(ii) The Nedungadi Bank Limited
v.
K.P Madhavankutty & Others
[2000 AIR SCW 397]

(iii) Management of Express Newspapers (Prvt) Limited
Madras
vs.

The Workers & Others
[AIR 1963 SC 569]

(iv) D.P Maheshwari
vs.
Delhi Administration & Ors.
[AIR 1983 (47) SC 477]

And also of Karnataka High Court in the matters of -

(v) Rangaswamy & Company
vs.
D.V Jagadish & Another

(vi) Hira Sugar Employees' Cooperative Consumers Stores Limited
vs.
P.P Korvekar

As against the aforesaid contentions, learned advocate Mr. Sinha has submitted that the Labour Court has not committed any error while coming to such a conclusion that the preliminary issue which has been raised by the petitioner-Company shall have to be decided alongwith the final adjudication of the main Reference. Mr. Sinha has also submitted that the Labour Court is not in statutory obligation to examine each and every issue as `preliminary issue/s'. Thus, according to Mr. Sinha, the Labour Court has rightly rejected the said application which would have otherwise delayed the entire main matter for adjudication. In support of his contentions, Mr. Sinha has relied upon decision of the Apex Court in the matter of National Council for Cement & Building Materials v. State of Haryana & Others., reported in [1996 (2) LLN 49] and in the matter of The Workmen & Ors. v. M/s. Hindustan Lever Limited, reported in 1984 SCC (L&S) 183.

After considering the submissions from both the learned advocates, it is undisputed fact that the Labour Court is having jurisdiction to adjudicate the industrial dispute, after the reference has been made to it by the appropriate Government. The Labour Court is required to adjudicate the entire dispute together finally and submit its award to the Appropriate Government. But usually whenever reference comes up before the Labour Court or the Industrial Tribunal, the employer/establishment, in order to delay the proceedings, raises the dispute whether it is an `industry' within the meaning and scope

of Section 2 (j); or whether the dispute referred to it for adjudication is an `industrial dispute' within the scope of Section 2 (k) and/or also whether the employee concerned is a `workman' within the meaning of Section 2 (s) of the Act. Such a tendency and practice of the employer to avoid decision on merits has been developed since last 15 - 20 years of inviting the interim orders from the Labour Court and thereafter to challenge the same before the higher forum and stall the proceedings pending before the Labour Court, wherein in any case, the sufferer is ultimately the workman and not the employer. Therefore, in such a situation wherein disadvantage has been taken by the employer by giving such application in almost all cases and inviting the orders from the Labour Court and thereafter to challenge the same in the higher forum, so naturally the workman has to surrender to the terms of employers because the workman is not able to bear the burden of expenses and to wait for a pretty long time for final adjudication and fruits of the award. Such tactics adopted by the employer should not be encouraged and it should have to be deprecated by the various decisions of the Apex Court.

In the matter of D.P Maheshwari [Supra], the Hon'ble Supreme Court has observed that, `...it was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. ... There was a time when it was thought prudent and wise policy to decide preliminary issue first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardies industrial peace, should decide all issues in dispute at the sametime without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait

for dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. The Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences.."

In the matter of S.K Verma v. Maheshchandra, reported in 1983 (2) LLN 637], the Apex Court while strongly disapproving the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merit, has observed that, `there appears to be three preliminary objections which have become quite fashion to be raised by all employers, particularly Public Sector Corporations, whenever an industrial dispute is referred to the Tribunal for adjudication. One objection is that there is no `industry'. The second that, there is no industrial dispute and the third, that the workman is not workman. It is pity that when the Central Government in all solemnity refers an industrial dispute for adjudication, the Public Sector Corporation which is an instrument of the State instead of welcoming the decision of the Tribunal on merits so as to absolve of any authority of being a bad employer or of victimization, etc. should admit to evade decision on merits by raising such objection and Government thereby satisfy carry the matter often times to the High Court and to the Supreme Court wasting public time and money. It is expected that public sector corporation to be model employers and nodal litigants. They are not expected to avoid adjudication or to indulge in dragging workman from Court to Court merely to vindicate not justice but some rigid technical stand taken by them..'

In the matter between National Council for Cement & Building Materials and State of Haryana & Ors., the Hon'ble Supreme Court, while considering the decisions rendered by it in the matters of Cooper Engineering Limited v. P.P Mundhe [1975 (2) LLN 321]; of S.K Verma v. Mahesh Chandra [1983 (2) LLN 637]; of D.P Maheshwari v. Delhi Administration [1984 (1) LLN 1] and Hindustan Lever Limited [1984 (1) LLN 460], in its judgment in paragraph 11 has observed that, ..`Usually, whenever a reference comes up before the Industrial Tribunal, the establishment, in order to delay the proceedings, raises the dispute whether it is an `industry' as defined in Section 2 (j); or whether the dispute referred to it for

adjudication is an `industrial dispute' within the scope of Section 2 (k) and also whether the employees are `workmen' within the meaning of Section 2 (s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions is in the affirmative, the Tribunal may proceed to deal with the real dispute on merits.'. In paragraph 12 of the said judgment, the Apex Court has further observed that, `we, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.' By the aforesaid decisions, the Apex Court has depreciated the old tactics of the employers of raising preliminary issues so as to prolong the adjudication of industrial dispute on merits.

Now, I consider the pronouncements of various Courts cited by Mr. Chari. The judgment in matter of National Engineering Industries Limited v. State of Rajasthan [2000 1 CLR 389] is not in respect to the preliminary issue but it relates to the power of the High Court to entertain writ petition challenging the terms of reference where there is allegation that there is no industrial dispute. Therefore, the said judgment is not relating to the preliminary point which has been canvassed by Mr.Chari. The second decision relied upon by Mr. Chari in the matter of The Nedungadi Bank Limited v. K.P Madhavankutty [2000 AIR SCW 397] is also not relating to the preliminary point but it relates as to whether while making the reference, the appropriate Government can also consider the question of delay and if the Government thinks it fit, then such a stale dispute cannot be referred but it is not in respect to the present controvercy between the parties. The decision of the Apex Court in the matter of Management of Express Newspapers (Private) Limited, Madras [Supra] is relating to the question of preliminary issue. But, in the said decision, it is not held that each and every issue raised by the employer as a Preliminary issue should have to be decided first. The two decisions of the Karnataka High Court in the matters of Rangaswamy & Company [Supra] and of Hira Sugar Employees' Cooperative Consumers Stores Limited [Supra] though being on the preliminary issue, however, in the first decision in the matter of Rangaswamy [Supra] it was a case that the Labour Court has examined the question of interim relief, and

therefore, the Court has held that before deciding the question of interim relief, the preliminary point which has been raised by the employer should have to be decided first then the interim relief is required to be granted by the Labour Court. So, it is altogether on the different footing. The second decision of the Karnataka High Court in the matter of Hira Sugar Employee's Cooperative Consumers Stores Limited [Supra] does not consider the decision in the matter of D.P Maheshwari and it only has considered the decision of the Apex court in the matter between Management of Express Newspapers (Private) Limited, Madras. Therefore, this judgment is also not relevant because subsequent to that decision, in case of National Council for Cement & Building Materials [Supra], almost all the decisions have been considered by the Apex Court. Thus, the decisions relied upon by Mr. Chari; as aforesaid, have no bearing in the matter at hand.

This Court, while exercising the powers under Article 226 and 227 of the Constitution of India is also required to examine the another question with regard to the interim order made by the Labour Court below Exh. 10 on 1st November, 1999. The Labour Court has come to the conclusion that the preliminary issue which has been raised by the petitioner Company shall have to be decided alongwith the final adjudication. While examining the legality and validity of such interim order, whether the power of this Court under Art. 226 & 227 can be exercised or not, which is also a discretionary power possessed by this Court. This question has been examined by the Apex Court in a reported decision in the matter of The Copper Engineering Ltd. v. P.P.Mundhe [AIR 1975 SC 1900] wherein it has been held that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It is also legitimate for the High Court to refuse to intervene at that stage. In the matter of Cadila Health Care Ltd.versus Union of India and Ors. reported in 1998 (2) GLH 513, this Court has held that the petition under Article 226 and 227 of the Constitution of India challenging the interlocutory order not deciding the case finally in that event, even if the interlocutory order is illegal, in absence of failure of justice and in view of the right to challenge the said order when it becomes final, the petition against the interim order is not maintainable. In the matter between Chaggan Ranchodlal Kukvav v. G.M., Western Railways [1998 (1) GLH 461], the Division Bench of this Court has

held that an order passed by the Tribunal can be challenged under Article 226 and 227 of the Constitution only if there is no jurisdictional error or procedural error apparent on the face of the record. In the matter of Mohmad Unus v. Mohmad Mustak, reported in AIR 1984 SC p-38, the Hon'ble Supreme Court has observed that mere wrong decision without in any manner is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to see that the inferior court or Tribunal functions within limits of its authority and not to correct error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court of the Tribunal. It will not review or reweigh the evidence upon which the determination of the inteferior Court or the Tribunal purports to be based or to correct the error of law in the decision.

Therefore, in view of the above decisions of the Apex Court as well as of this Court, it appears that the Labour Court, Ahmedabad has not committed any error in making the interim order dated 1st November, 1999 below Exh. 10. On the contrary, the Labour Court has rightly passed an appropriate order in consonance with the object of the Industrial Disputes Act. The Labour Court does not appear to have committed any failure of justice between the parties, and therefore, while exercising the powers under Articles 226 & 227 of the Constitution, once the Labour Court has not committed any error which is found apparent on the face of the record, I am not entertaining this petition on this ground also.

Recently, the Full Bench of Allahabad High Court has considered the very question in the matter between M/s. Swaroop Veg. Products Industries Limited v. The Labour Court-II, Meerut & Ors.,reported in 1997 (77) FLR 546, wherein the Full Bench has held that, `the importance of expedient disposal has been felt mainly for the reason that litigation is between mighty management and a poor workman and in such cases, experience shows that the Management usually tries to delay the proceedings as much as possible to harass the workman who has lost means of earning his bread on account of either dismissal or discharge or termination order. Viewed from this angle, it is not difficult to see that the answer to the question in the context of the matter is in favour of trying all the issues altogether. That is not to say that in an appropriate case judged on the facts and circumstances, the Tribunal / Labour Court cannot decide

the issue relating to the validity of the domestic inquiry as a preliminary issue before proceeding further in the matter but it cannot be laid down as a larger number of universal application that the management as of right insist that the Industrial Tribunal/Labour Court is bound to accept its request to take up such issue as a preliminary issue, whenever is sought for in the case.

After considering the case law which has been cited at the Bar by the respective parties in respect to the point in question whether the Labour Court has committed any error or not while deciding the application Exh. 10 filed by the petitioner-Company by an order dated 1st November, 1999, I am of the opinion that the Labour Court has rightly passed the said order which conforms with the decision of the Apex Court; as referred to hereinabove and the Labour Court has not committed any error while coming to such a conclusion. On the contrary, according to my opinion, it is the only right course for the Labour Court in such a situation for avoiding delay of final adjudication. Normally, the Labour Court should adopt such a view which definitely restrain the employer to adopt such device of raising such issue as a preliminary issue in each and every case and thereby stall the proceedings. Therefore, according to my opinion, the Labour Court is perfectly right in coming to the conclusion that the preliminary issue raised by the petitioner-Company can be examined and adjudicated at the time of final adjudication of the main dispute. Therefore, considering the entire aspect of the matter, I am of the opinion that the Labour Court has not committed any error of law in making the impugned order dated 1st November, 1999. Therefore, this petition stands dismissed. Notice is discharged. No order as to costs. The Registry is directed to send copy of this order to the Registrar, Industrial Tribunal, Gujarat, forthwith.

[H.K Rathod, J.]

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Prakash*